

**ENTERED**

September 19, 2024

Nathan Ochsner, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**GARCIA GLENN WHITE,  
Petitioner,

v.

BOBBY LUMPKIN, Director,  
Texas Department of Criminal Justice,  
Correctional Institutions Division,  
Respondent.§  
§  
§  
§  
§  
§  
§  
§  
§

H-02-CV-1805

**ORDER**


The State of Texas has scheduled death row inmate Garcia Glenn White's execution for **October 1, 2024**. On September 13, 2024, White filed an Emergency Opposed Motion for Substitution of Counsel & Motion for a Stay of Execution. (Docket Entry No. 109). White's motion asks for the substitution of counsel on narrow grounds, specifically so they can investigate and litigate a federal claim under *Atkins v. Virginia*, 536 U.S. 304 (2002), that he is ineligible for execution. White argues that a conflict of interest precludes his federally appointed attorneys, Patrick F. McCann and Rosa A. Eliades, from successfully litigating that claim in federal court because of the Anti-Terrorism and Effective Death Penalty Act's limitations period.

White's current attorneys have filed a Response to Emergency Opposed Motion for Substitution of Counsel. (Docket Entry No. 112). White's current attorneys also request a hearing on this issue. (Docket Entry No. 110). White's current attorneys have recently litigated an *Atkins* claim on his behalf in state court. The current attorneys have provided the Court with the detailed and extensive state-court pleadings relating to his *Atkins* claim. (Docket Entry No. 113). Yesterday, the Texas Court of Criminal Appeals dismissed White's *Atkins* claim as an abuse of the writ. *Ex Parte Garcia Glen White*, 2024 WL 4220599, at \*1 (Tex. Crim. App. 2024).

White's current attorneys have said that, "[i]f the [Court of Criminal Appeals] denies the subsequent writ with an opinion, Mr. White may continue to litigate the matters raised in the writ in the federal courts." (Docket Entry No. 112 at 2). The Court needs clarification on whether White's current attorneys will now seek federal review of the *Atkins* claim. See 28 U.S.C. § 2244(b)(3) (requiring inmates to file successive petitions in the circuit court). The Court **ORDERS** White's current attorneys to file an advisory specifying whether they will pursue an *Atkins* claim in federal court and, if they do, when they will file it. If necessary, White's current attorneys may file their advisory *ex parte* and under seal. White's current attorneys will file their advisory by **5:00 p.m. on September 20, 2024**.

The Court will take the request for a hearing under advisement. The briefing schedule will otherwise proceed as established. (Docket Entry No. 111).

**SIGNED** at Houston, Texas, on this 19th day of September, 2024.

A handwritten signature in cursive script, appearing to read "Keith P. Ellison", is written over a horizontal line.

KEITH P. ELLISON  
United States District Judge